



Department of Toxic Substances Control



Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

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5796 Corporate Avenue
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Governor

March 18, 2002

Captain James Rainwater
Base Commander
Naval Base Ventura County, Port Hueneme
1100 23rd Avenue
Port Hueneme, California 93043

Dear Captain Rainwater:

The California Department of Toxic Substances Control (DTSC) received an Action Memorandum (AM), dated March 4, 2002, for a non-time critical Interim Removal Action (IRA) of Polychlorinated Biphenyls (PCB) contaminated soil. The AM, which applies to work at Installation Restoration Program Sites 12B and 23 at Naval Base Ventura County, Port Hueneme, was signed on March 5, 2002. DTSC received the AM on March 14, 2002 and a Removal Action Workplan (RAW) on March 15, 2002. DTSC has the following concerns regarding the IRA:

1. Field work for the IRA began on March 8, 2002, almost a week before DTSC received the signed AM and a full week before DTSC received the revised RAW. DTSC had requested to the Navy that the IRA not be implemented until the AM and RAW adequately addressed DTSC's comments that were submitted to the Navy on March 4, 2002. Where it provides regulatory oversight, DTSC does not allow parties performing remedial cleanup activities to begin such work until after DTSC has approved a RAW. These requirements apply to sites on privately owned and government owned properties. Despite these requirements, the Navy chose to implement the field activities before sending the revised AM and RAW to DTSC.

Section 11 of the Department of Defense Environmental Restoration Program (DERP) Management Guidance, dated September 28, 2001, provides for substantive involvement of state regulatory agencies in the planning and

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execution of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) activities at military bases. This guidance requires military installations to take proactive steps to identify and address issues of concern to stakeholders, including state regulatory agencies. Specifically, this guidance requires installations to involve regulatory agencies in relative risk evaluations; project planning, budgeting and implementation; workplan development; site and project prioritization; completion of response activities; and community involvement efforts. The Navy's refusal to delay field implementation of the IRA until after it had obtained DTSC's concurrence with the AM and RAW is clearly inconsistent with the DERP Guidance. It is imperative that military installations, including Naval Base Ventura County, cooperate with DTSC and other state regulatory agencies in a manner that complies with state law and the applicable DERP Guidance.

2. The AM repeatedly states that the Toxic Substances Control Act (TSCA) or Title 40 of the Code of Federal Regulation Section 761.61 (40 C.F.R. 761.61) is a chemical-specific applicable or relevant and appropriate requirement (ARAR) to this IRA. The AM proposes using the TSCA PCB cleanup standard for high occupancy areas of one part per million (ppm) as the Removal Action Objective (RAO) for this IRA. As stated in previous correspondence to the Navy, DTSC has determined that TSCA is not an ARAR if the sites are to be designated for unrestricted land use after the IRA is completed. DTSC maintains that this TSCA standard is not protective of human health or the environment for unrestricted land use scenarios for the following reasons. First, TSCA did not consider several human cancer risk exposure pathways such as ingestion or dermal contact with contaminated surface or ground waters, and consumption of agricultural/livestock or residential garden products cultivated in, or raised on contaminated soil. Secondly, TSCA did not consider risks to the environment. However, DTSC considers this TSCA standard protective for industrial land use scenarios because that standard is numerically equivalent to the U.S. Environmental Protection Agency (USEPA) Region 9 Preliminary Remediation Goal (PRG) for PCB's under an industrial scenario.
3. If the Navy completes this IRA using its proposed RAO, DTSC reserves its right to require the Navy to perform further remediation at these sites pursuant to other authorities, including CERCLA and applicable state law. Part 761.61(A)(1)(ii) of Title 40 of C.F.R. states that the self-implementing cleanup under TSCA is non-binding upon cleanups conducted pursuant to other authorities. The 1998 preamble to the final rule that amended part 761 of 40 C.F.R. states that other federal, state, or local laws or regulations may impose additional, and perhaps more stringent, requirements on PCB disposal. The preamble further clarifies

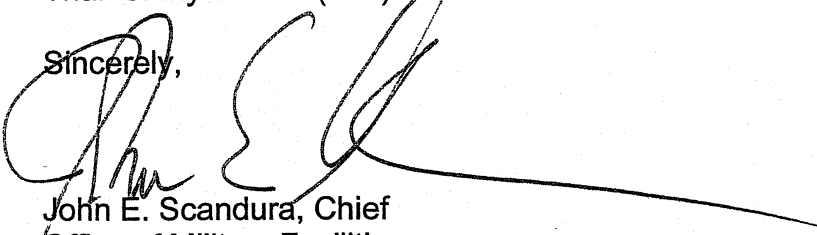
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that a facility cannot unilaterally decide to perform a self-implementing cleanup under TSCA and then contend that no further cleanup action is necessary under other authorities, including CERCLA, the Resource Conservation and Recovery Act (RCRA), and applicable state law.

Having stated the above concerns, DTSC hereby concurs with the Action Memorandum and the Removal Action Workplan provided the RAO of 1.0 ppm for PCB apply only to scenarios where the land use is restricted to commercial and industrial uses. Upon completion of the IRA, the Navy must submit to DTSC a report that documents the results of the confirmatory sampling, presents a risk assessment of the residual PCB contamination remaining at Sites 12B and 23, and proposed final response actions at the sites that are in accordance with CERCLA and applicable state law. The final remedial alternatives at these two sites must be addressed in a Remedial Investigation/Feasibility Study that complies with CERCLA. Any final determination, including no further action, must be presented in a Record of Decision pursuant to CERCLA and a Remedial Action Plan pursuant to California Health and Safety Code, Division 20, Chapter 6.8., section 25356.1.

If you have any questions, please feel free to contact me at (714) 484-5456 or Quang Than of my staff at (714) 484-5352.

Sincerely,



John E. Scandura, Chief
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